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November 21, 1975

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of State
Department of Defense
Energy Research & Development Admin.
National Security Council
Arms Control & Disarmament Agency
Department of Justice
Central Intelligence Agency

We have previously requested (on 11/19/75) your views on enrolled bill S. 1517, the "Foreign Relations Authorization Act, fiscal year 1976."

In the event it should be decided to recommend to the President that he veto S. 1517, we are circulating the attached materials for your information and informal comment. They include suggested revisions to Executive Order 11044 and a proposed veto message. We would appreciate your initial reactions to the approach suggested in these materials by C.O.B. TODAY OR MONDAY MORNING, 11/24/75. (A copy of existing Executive Order 11044 and Sec. 146 of S. 1517 on arms control impact statements are also attached for your information.)

After we have received your initial reactions to the attached materials and your enrolled bill letters, it may be necessary to schedule an interagency meeting at OMB early next week to discuss the proposed Executive Order and veto message.

Questions should be referred to George R. Gilbert (395-4710) the legislative analyst in this office.

James F. C. Hyde, Jr. for
Assistant Director for
Legislative Reference

Suggested Updating and Strengthening
E. O. 11044--Interagency
Coordination of Arms Control
and Disarmament and Related Matters

"Updates"

- (1) Update the 13 year old WHEREAS's
- (2) In the "by virtue" clause, give permanent citation of the Arms Control Act -- 22 USC2551 et seq.
- (3) Use "Energy Research and Development Administration" in lieu of AEC in section 1(b). Add Commerce, Labor, and USIA.
- (4) Delete final sentence in section 4, Research. Submission of the AC&D research schedule to BOB/OMB has not proved useful and has been dropped in practice.

"Strengthenings"

- (1) Under section 2, Cooperation use some of the bill's verbiage on ACDA keeping informed. E.G., "on a continuing basis, provide full and timely access to detailed information."
- (2) Define ACDA Director's relationship to NSC. E.G., declare him "principal adviser to the NSC on matters relating to arms control and disarmament" and/or state that he shall attend all meetings, and otherwise participate, when matters of arms control and disarmament are considered.
- (3) Extensively, rewrite section 5, Force and armament levels. Include ERDA and add two new thoughts -- one, that ACDA may make recommendations to the responsible agency and to NSC on these matters, synchronized with the authorization/appropriation process and, two, that proposing agencies shall include adequate discussion of arms control implications in all presentations to the Congress.
- (4) Add a new section on Report to the Congress stating that in the annual report required by section 50 of the Act, ACDA will include the "arms control posture statement" (cited in section 149 of the Bill).

b. Executive Order 11044, August 20, 1962, 27 F.R. 8341, 3 CFR, 1959-63 Comp., p. 627

INTERAGENCY COORDINATION OF ARMS CONTROL AND DISARMAMENT MATTERS

WHEREAS there has been established by law the United States Arms Control and Disarmament Agency; and

WHEREAS the Arms Control and Disarmament Act provides that the Director of that Agency shall be the principal adviser to the Secretary of State and the President on Arms control and disarmament matters and requires the Director to assume primary responsibility within the Government for such matters under the direction of the Secretary of the State; and

WHEREAS the Act authorizes and directs the said Director to coordinate significant aspects of the United States arms control and disarmament policy and related matters; and

WHEREAS it is desirable that the President establish procedures for coordination, and for the resolution of differences of opinion between the United States Arms Control and Disarmament Agency and other affected Government agencies, concerning all significant aspects of arms control and disarmament policy and related matters:

Now, THEREFORE, by virtue of the authority vested in me by the Arms Control and Disarmament Act (75 Stat. 631; 50 U.S.C. 1501 et seq.¹ and as President of the United States, it is hereby ordered as follows:

SECTION 1. Definitions.—As used hereinafter:

(a) The word "Director" means the Director of the United States Arms Control and Disarmament Agency.

(b) The term "affected agencies" shall include the Department of Defense, the Atomic Energy Commission, the Central Intelligence Agency, the National Aeronautics and Space Administration, and, when not inappropriate in the context, the United States Arms Control and Disarmament Agency, and shall include also such other agencies as the Director may designate hereunder.²

(c) The terms "arms control" and "disarmament" shall be defined as they are defined in section 3(a) of the Arms Control and Disarmament Act.

(d) The term "related matters" shall include those matters which are necessary to, describe for, or otherwise directly connected with the functions described in sections 3 and 4 of this order.

¹ 50 U.S.C. 1501 et seq. was a temporary designation in the United States Code. The permanent citation is 22 U.S.C. 2551 et seq.

² In January 1964, the Director of the Arms Control and Disarmament Agency secured the agreement of the Departments of Commerce and Labor, and the United States Information Agency to be "affected agencies" under this subsection.

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SEC. 2. Cooperation.—The Director and the heads of affected agencies shall keep each other fully and currently informed on all significant aspects of United States arms control and disarmament policy and related matters, including current and prospective policies, plans and programs. Differences of opinion concerning arms control and disarmament policy and related matters arising between the U.S. Arms Control and Disarmament Agency and other affected agencies with respect to such subjects which involve major matters of policy and cannot be resolved through consultation shall be promptly referred to the President for decision. In such instances the head of an agency presenting recommendations with respect to such differences to the President shall give the heads of affected agencies notice of the occasion for and substance of his recommendations.

SEC. 3. Policy coordination.—(a) The Director shall establish procedures consistent with this order and the Arms Control and Disarmament Act to assure coordination of:

(1) his recommendations to the Secretary of State and the President and to the heads of affected agencies relating to United States arms control and disarmament policy;

(2) Government planning for the conduct and support of research for arms control and disarmament policy formulation, including the comprehensive and balanced plan provided for in Section 4 of this order;

(3) Government planning for the dissemination of public information concerning arms control and disarmament;

(4) the preparation for and management of United States participation in international negotiations in the arms control and disarmament field; and

(5) the preparation for, operation of, or, as appropriate, direction of United States participation in such control systems as may become part of the United States arms control and disarmament activities.

(b) The Director shall exercise leadership in assuring that differences of opinion concerning arms control and disarmament policy and related matters are resolved expeditiously and shall take such steps as may be appropriate in order to produce common or harmonious action among the agencies concerned.

SEC. 4. Research.—With the advice and assistance of affected agencies, the Director shall develop and keep current a comprehensive and balanced program of research, development and other studies needed to be conducted by or for the Government for arms control and disarmament policy formulation. The Director shall maintain a continuing inventory of Federal activities related to the planned program and advise the affected agencies as to their respective participations in the planned program in order to produce harmonious action and prevent duplication of effort. The Director shall periodically submit to the Director of the Bureau of the Budget a consolidated schedule of such activities with assessments of their respective programs by the responsible agencies, together with his evaluations regarding these activities.

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SEC. 5. *Force and armament levels.*—The Secretary of Defense shall keep the Director informed with respect to the planning of armament forces levels and armaments and, for consideration in connection with such planning, the Director shall furnish the Secretary of Defense statements of existing and projected arms control and disarmament policies.

TO THE SENATE:

I return without my approval S. 1517, the Foreign Relations Authorization Act, Fiscal Year 1976.

I disapprove S. 1517, because certain provisions of section 146 regarding the Arms Control and Disarmament Agency would impose by law upon the President and key national security officials of the executive branch burdensome, unwise, and unacceptable procedures governing the manner in which they make vital decisions and recommendations on armaments programs and arms control and disarmament policy and negotiations. The prescribed procedure would cast the President's principal national security policy advisers--the Secretaries of State and Defense, the Administrator of the Energy Research and Development Administration (who is responsible for nuclear weapons development and production programs), the Director of the Arms Control and Disarmament Agency--in virtually adversary relationships, rather than the smooth working relationships so necessary for effective policy formulation for the nation's security.

I consider the procedures required by section 146 to be a direct interference with the powers of the President contemplated by the Constitution of the United States as powers which he shall exercise, in his discretion, under Article II. The sound exercise of governmental powers in the United States calls upon us to respect the proper separation of governmental powers. Section 146 oversteps the bounds. Within the executive branch, the effective functioning of that branch requires that I shall make the

final decisions entrusted in me as the President, that I as Chief Executive shall establish the methods employed within that branch which will enable me best to make such decisions, and maintain control over the departments and agencies to the end that the laws be faithfully executed. It also requires that, in making executive decisions and ^{for} formulating my recommendations to the Congress, I shall determine where the competence lies among the departments and agencies with respect to matters such as the national security, defense, and the means, methods and weapons that are necessarily engaged in these fundamental interest.

The legislation proposed in section 146 would afford the Arms Control and Disarmament Agency a role - which reverses its present and appropriate function of pursuing, within an international framework, and through agreement with other nations, a safeguarded control of weapons. In place of the fundamental purposes reposed in that Agency, the bill adds the function of overseer over the Department of Defense, the Energy Research and Development Administration, and perhaps other agencies to the end that the Arms Control and Disarmament Agency would become a participant in the defense, weaponry, procurement and even research and development matters, for which the other agencies are primarily accountable. It therefore reduces and impairs the available capabilities of the Arms Control and Disarmament Agency for its own objectives in arms control negotiations, and dissipates them among activities in which the arms control criteria are shifted from the international framework to operate, instead, as the means to impose and institutionalize perhaps - unilateral - self-imposed - constraints on our own